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FEDERAL ELECTION COMMISSION  
WASHINGTON

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October 19, 2012

OFFICE OF FEDERAL  
COUNSEL

FEC MAIL CENTER

Office of General Counsel,  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463.

MUR # 6672

To: Federal Election Commission

**Complaint** John Russell brings this complaint before the Federal Election Commission seeking an immediate investigation and enforcement action against Congressman Gus Bilirakis for direct and serious violations of the Federal Election Campaign Act.

**Complainant** John Russell is a candidate for Florida's 12th district, running against incumbent Bilirakis. He is a citizen of the United States, a registered voter and a resident of the State of Florida. As a registered voter, Russell is entitled to receive information contained in reports of receipts and disbursements required by the FECA, 2 U.S.C. 434(a)(2), and FEC regulation 11 C.F.R. section 104.1. Russell discovered that Bilirakis used campaign contributions for personal use and now must report these violations.

**Respondent** Congressman Gus Bilirakis, District 12-Florida

**Contact Info:** 407 Cannon HOB Washington DC 20515, Ph: 202-225-5755 and 35111 U.S. Highway 19 North Palm Harbor Professional Center, Suite 301 Palm Harbor, FL 34684 Ph: 727-773-2871

**Factual allegations** According to FEC documents, Bilirakis used campaign funds of Bilirakis for Congress to pay for membership dues to a group called the Royal Order of Jesters on November 4, 2008 and November 12, 2008. Congressman Bilirakis used campaign contributions to pay for Jester event registration on April 5, 2007. The Act prohibits these three conversions of campaign funds to personal use. A contribution or donation "shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office." 2 U.S.C. §439a(b)(2). Furthermore, the Act prohibits conversion of campaign funds for:

**Entertainment** - The campaign may not pay for admission to sporting events, concerts, theater and other forms of entertainment. Campaign funds may be used, however, if the entertainment is part of a specific officeholder or campaign activity. They may not be used for a leisure outing at which the discussion occasionally focuses on the campaign or official functions. 3113.1(g)(1)(i)(F).

**Dues, Fees and Gratuities** - Campaign funds may not be used to pay for dues to country clubs, health clubs, recreational facilities or other nonpolitical organizations unless the payments are made in connection with a specific fundraising event that takes place on the organization's premises. See, for example, AO 1995-26. Campaign funds may be used for membership dues in an organization that may have political interests. 113.1(g)(1)(i)(G). **EXAMPLE:** A candidate or officeholder may use campaign funds to pay for a membership in a civic or community group in his or her district in order to maintain political contacts with constituents or the business community.

Under FECA regulations, these membership and event registration payments to the Royal Order of Jesters constitute personal use as determined on a case-by-case basis. Expenses that a candidate can reasonably demonstrate resulted from the campaign or officeholder duties are not considered personal use, but Jester fees cannot be treated as being related to the campaign or officeholder duties.

**Background of Jesters** In this video, <http://www.youtube.com/watch?v=3-YMNRLd2W6> I read a statement on October 15, 2012 at a candidate's forum. I explain that the Jesters is a worldwide fraternal organization that sponsors social gathering that, according to the FBI and U.S. Attorney's office, features "Jester girls" or prostitutes. They are also a nonprofit or tax exempt group. A recent decision by the Indiana Tax Review Board denied the Jesters property tax exemption for their new headquarters building and established that the Jesters do not meet the most basic requirements of a nonprofit group, that the Jesters are a recreational group and a social club and that the government has no obligation to provide entertainment, merriment or "mirth." Media coverage includes WCTV reporter Andy Alcock's broadcasts here <http://www.wctv.tv/home/headlines/Florida-Congressman-174484421.html>

Online investigative journalist Sandy Frost published "Jesters in Congress" which details not only Bilirakis' misappropriations but those of Tennessee Congressman John Duncan Jr. here <http://sandyfrost.newsvine.com/news/2012/09/27/14129764-jesters-in-congress>

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**Conclusion** John Russell requests that the Federal Election Commission conduct an investigation into these allegations because the FECA specifically prohibits a candidate for federal office from using campaign funds to pay the personal expenses of a candidate. The Act states that "a contribution or donation shall not be converted by any person to personal use." The Act further specifies that "a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of a Federal office, including entertainment or membership dues for a group like the Royal Order of Jesters. I, John Russell, declare that the respondent has violated the Federal Election Campaign Act and applicable FEC regulations and ask that you impose sanctions appropriate to these violations and take such further action as may be appropriate, including, but not limited to referring this case to the Department of Justice for criminal investigation.

Sincerely,



John T. Russell

Address:

Attachments: (3) copies of complaint

(4) DVDs with video of John Russell exposing Rep. Bilirakis at Candidate Forum in Dade City, Florida on October 15, 2012

Final Determination of the Marion County Property Tax Assessment Board of Appeals dated January 9, 2012

Gus Bilirakis FEC Form 3 dated December 3, 2008

Plea Agreement for United States vs. Lesinski dated November 19, 2012

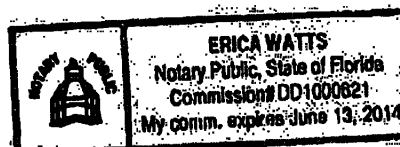
WCTV article: WCTV Exclusive: Opponent to Congressman with Ties to 'Royal Order of Jesters' Calls for Representative's Resignation

STATE OF FLORIDA  
COUNTY OF Lake

Sworn to (or affirmed) and subscribed before me  
this 22 day of October, 2012  
by John T. Russell

Personally Known  
Type of Identification Produced ADL

PRINT TYPE OR STAMP NAME OF NOTARY  
OR PRODUCED IDENTIFICATION



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**SCHEDULE B (FEC Form 3 )  
ITEMIZED DISBURSEMENTS**Use separate schedule(s)  
for each category of the  
Detailed Summary PageFOR LINE NUMBER:  
(check only one)

PAGE 83/80

<input checked="" type="checkbox"/> 17	<input type="checkbox"/> 18	<input type="checkbox"/> 19a	<input type="checkbox"/> 19b
<input type="checkbox"/> 20a	<input type="checkbox"/> 20b	<input type="checkbox"/> 20c	<input type="checkbox"/> 21

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)

Billirakis for Congress

Full Name (Last, First, Middle Initial)

A. Royal Order of Jesters

Mailing Address 3922 Versailles Drive

City Tampa State FL Zip Code 33634

Purpose of Disbursement  
event registration

Candidate Name

Category/  
TypeOffice Sought: House  
Senate  
PresidentDisbursement For: 2008  
☒ Primary General  
Other (specify) ▼

State: District:

Transaction ID: D232-014k01

Date of Disbursement

04 05 2007

Amount of Each Disbursement this Period

339.13

Refund or Disposal of Excess  
Contributions Required Under  
11 C.F.R. 400.53

Full Name (Last, First, Middle Initial)

B. Sprint

Mailing Address P.O. Box 660092

City Dallas State TX Zip Code 75266

Purpose of Disbursement  
telephone

Candidate Name

Category/  
TypeOffice Sought: House  
Senate  
PresidentDisbursement For: 2008  
☒ Primary General  
Other (specify) ▼

State: District:

Transaction ID: D248-00160R

Date of Disbursement

04 16 2007

Amount of Each Disbursement this Period

309.76

Refund or Disposal of Excess  
Contributions Required Under  
11 C.F.R. 400.53

Full Name (Last, First, Middle Initial)

C. Sprint

Mailing Address P.O. Box 660092

City Dallas State TX Zip Code 75266

Purpose of Disbursement  
telephone

Candidate Name

Category/  
TypeOffice Sought: House  
Senate  
PresidentDisbursement For: 2008  
☒ Primary General  
Other (specify) ▼

State: District:

Transaction ID: D249-00160S

Date of Disbursement

05 04 2007

Amount of Each Disbursement this Period

337.61

Refund or Disposal of Excess  
Contributions Required Under  
11 C.F.R. 400.53

SUBTOTAL of Disbursements This Page (optional)

986.50

TOTAL This Period (last page this line number only)

**SCHEDULE B (FEC Form 3)**  
**ITEMIZED DISBURSEMENTS**

 Use separate schedule(s)  
 for each category of the  
 Detailed Summary Page

 FOR LINE NUMBER:  
 (check only one)

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<input type="checkbox"/> 20a	<input type="checkbox"/> 20b	<input type="checkbox"/> 20c	<input type="checkbox"/> 21

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)

Billirakis for Congress

A.

 Full Name (Last, First, Middle Initial)  
 Public Concepts, LLC

Mailing Address 5730 Corporate Way, #214

 City State Zip Code  
 West Palm Beach FL 33407

 Purpose of Disbursement  
 postage

Candidate Name

 Category/  
 Type

 Office Sought: House  
 Senate  
 President

 Disbursement For: 2008  
 Primary X General  
 Other (specify) ▼

State: District:

 Transaction ID: D908-019L08  
 Date of Disbursement

10	23	2008
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Amount of Each Disbursement this Period

121.94

 Refund or Disposal of Excess  
 Contributions Required Under  
 11 C.F.R. 400.53

B.

 Full Name (Last, First, Middle Initial)  
 Royal Order of Jesters

Mailing Address 3922 Versailles Drive

 City State Zip Code  
 Tampa FL 33634

 Purpose of Disbursement  
 membership dues

Candidate Name

 Category/  
 Type

 Office Sought: House  
 Senate  
 President

 Disbursement For: 2008  
 Primary X General  
 Other (specify) ▼

State: District:

 Transaction ID: D985-014K03  
 Date of Disbursement

11	04	2008
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Amount of Each Disbursement this Period

25.00

 Refund or Disposal of Excess  
 Contributions Required Under  
 11 C.F.R. 400.53

C.

 Full Name (Last, First, Middle Initial)  
 Royal Order of Jesters

Mailing Address 3922 Versailles Drive

 City State Zip Code  
 Tampa FL 33634

 Purpose of Disbursement  
 membership dues

Candidate Name

 Category/  
 Type

 Office Sought: House  
 Senate  
 President

 Disbursement For: 2008  
 Primary X General  
 Other (specify) ▼

State: District:

 Transaction ID: D986-014K04  
 Date of Disbursement

11	13	2008
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Amount of Each Disbursement this Period

786.13

 Refund or Disposal of Excess  
 Contributions Required Under  
 11 C.F.R. 400.53

SUBTOTAL of Disbursements This Page (optional)

927.07

TOTAL This Period (last page this line number only)

**SCHEDULE B (FEC Form 3)  
ITEMIZED DISBURSEMENTS**Use separate schedule(s)  
for each category of the  
Detailed Summary PageFOR LINE NUMBER:  
(check only one)

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☐ 20a ☐ 20b ☐ 20c ☐ 21

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NAME OF COMMITTEE (In Full)  
Billrakis for Congress

A.		Full Name (Last, First, Middle Initial) Public Concepts, LLC	Transaction ID: D906-019L06 Date of Disbursement 1-0-2008
Mailing Address		5730 Corporate Way, #214	
City	State	Zip Code	Amount of Each Disbursement this Period
West Palm Beach	FL	33407	121.94
Purpose of Disbursement postage		Category/ Type	Refund or Disposal of Excess Contributions Required Under 11 C.F.R. 400.53
Candidate Name			
Office Sought:	House Senate President	Disbursement For: 2008 Primary <input type="checkbox"/> General <input checked="" type="checkbox"/> Other (specify) ▼	
State:	District:		
B.		Full Name (Last, First, Middle Initial) Royal Order of Jesters	Transaction ID: D985-014k03 Date of Disbursement 1-0-2008
Mailing Address		3922 Versailles Drive	
City	State	Zip Code	Amount of Each Disbursement this Period
Tampa	FL	33634	25.00
Purpose of Disbursement membership dues		Category/ Type	Refund or Disposal of Excess Contributions Required Under 11 C.F.R. 400.53
Candidate Name			
Office Sought:	House Senate President	Disbursement For: 2008 Primary <input type="checkbox"/> General <input checked="" type="checkbox"/> Other (specify) ▼	
State:	District:		
C.		Full Name (Last, First, Middle Initial) Royal Order of Jesters	Transaction ID: D986-014k04 Date of Disbursement 1-13-2008
Mailing Address		3922 Versailles Drive	
City	State	Zip Code	Amount of Each Disbursement this Period
Tampa	FL	33634	780.13
Purpose of Disbursement membership dues		Category/ Type	Refund or Disposal of Excess Contributions Required Under 11 C.F.R. 400.53
Candidate Name			
Office Sought:	House Senate President	Disbursement For: 2008 Primary <input type="checkbox"/> General <input checked="" type="checkbox"/> Other (specify) ▼	
State:	District:		

SUBTOTAL of Disbursements This Page (optional) ▶

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TOTAL This Period (last page this line number only) ▶

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

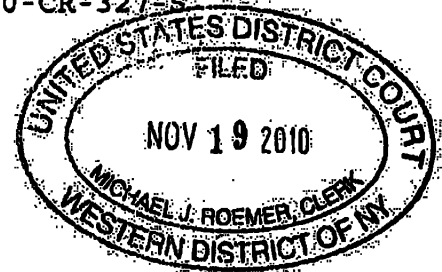
v.

MICHAEL LESINSKI,

Defendant.

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10-CR-327-S



PLEA AGREEMENT

The defendant, MICHAEL LESINSKI, and the United States Attorney for the Western District of New York (hereinafter "the government") hereby enter into a plea agreement with the terms and conditions as set out below.

I. THE PLEA AND POSSIBLE SENTENCE

1. The defendant agrees to waive indictment and to plead guilty to a one-count Information charging a violation of Title 18, United States Code, Section 4 (misprision of felony), for which the maximum possible sentence is a term of imprisonment of three (3) years, a fine of \$250,000, a mandatory \$100 special assessment, and a term of supervised release of one (1) year. The defendant understands that the penalties set forth in this paragraph are the maximum penalties that can be imposed by the Court at sentencing.

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2. The defendant understands that, if it is determined that the defendant has violated any of the terms or conditions of supervised release, the defendant may be required to serve in prison all or part of the term of supervised release, up to one (1) year, without credit for time previously served on supervised release. As a consequence, in the event the defendant is sentenced to the maximum term of incarceration, a prison term imposed for a violation of supervised release may result in the defendant serving a sentence of imprisonment longer than the statutory maximum set forth in ¶ 1 of this agreement.

## II. ELEMENTS AND FACTUAL BASIS

3. The defendant understands the nature of the offense set forth in ¶ 1 of this agreement and understands that if this case proceeded to trial, the government would be required to prove beyond a reasonable doubt the following elements of the crime:

- a. a federal felony was committed, to wit, the transportation of individuals in interstate or foreign commerce with the intent that such individuals engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense (a violation of the Mann Act, Title 18, United States Code, Section 2421);
- b. that the defendant had knowledge of the commission of that felony;
- c. that the defendant failed to notify a judge or other person in civil or military authority under



the United States as soon as possible about the commission of the offense; and

- d. that the defendant did an affirmative act to conceal the offense.

FACTUAL BASIS

4. The defendant and the government agree to the following facts, which form the basis for the entry of the plea of guilty including relevant conduct:

- a. For the time period including 2005, the defendant, MICHAEL LESINSKI, was a member of the Buffalo chapter of a national men's organization known as the Royal Order of Jesters. Other local chapter members included Ronald Tills, Michael Stebick, and John Towbridge. In April 2005, the national organization held its 2005 annual meeting at a hotel in Niagara Falls, Ontario, Canada. Senior members of the Buffalo chapter agreed with representatives of the national organization to transport women, a/k/a "Jester Girls," from the Buffalo, New York airport to the site of the annual meeting in Niagara Falls, Ontario, Canada. The women came from various parts of the United States to the national meeting in order to have sex in exchange for money with members of the organization attending the national meeting. At the direction of others in the Jester organization, the defendant transported approximately six or seven women from the Buffalo, New York airport to the hotel in Niagara Falls, Ontario, Canada, where the women did engage in acts of prostitution, providing various sexual acts, including sexual intercourse, with members of the Jesters organization in exchange for money. The women were eventually transported back to the Buffalo, New York airport from the hotel in Niagara Falls, Ontario, Canada.

- b. The defendant did not report any of the above facts to any judge or civil or military authority under the United States. Also, when returning to the United States from Canada, the defendant then had knowledge of the purpose of the women's presence at the Jesters organization meeting and lied to United States Customs officials as to the true purpose of his visit to Canada in a deliberate attempt to conceal the crime.

### III. SENTENCING GUIDELINES

5. The defendant understands that the Court must consider but is not bound by the Sentencing Guidelines (Sentencing Reform Act of 1984).

#### BASE OFFENSE LEVEL

6. The government and the defendant agree that Guidelines §§ 2X4.1(a) and 2G1.1(a)(2) apply to the offense of conviction and provide for a base offense level of 5.

#### U.S.S.G. CHAPTER 3 ADJUSTMENTS

7. The government and the defendant agree that the following adjustment to the base offense level does apply:
- a. The five-level upward adjustment of Guidelines § 3D1.4 (combined offense level for five or more victims). See, Guidelines § 2G1.1(d)(1) and Application Note 5.

ADJUSTED OFFENSE LEVEL

8. Based on the foregoing, it is the understanding of the government and the defendant that the adjusted offense level for the offense of conviction is 10.

ACCEPTANCE OF RESPONSIBILITY

9. At sentencing, the government agrees not to oppose the recommendation that the Court apply the two (2) level downward adjustment of Guidelines § 3E1.1(a) (acceptance of responsibility), which would result in a total offense level of 8.

CRIMINAL HISTORY CATEGORY

10. It is the understanding of the government and the defendant that the defendant's criminal history category is I. The defendant understands that if the defendant is sentenced for, or convicted of, any other charges prior to sentencing in this action the defendant's criminal history category may increase. The defendant understands that the defendant has no right to withdraw the plea of guilty based on the Court's determination of the defendant's criminal history category.

GUIDELINES' APPLICATION, CALCULATIONS AND IMPACT

11. It is the understanding of the government and the defendant that, with a total offense level of 8 and criminal history category of I, the defendant's sentencing range would be a term of imprisonment of 0 to 6 months, a fine of \$1,000 to \$10,000, and a period of supervised release of one (1) year. Notwithstanding this, the defendant understands that at sentencing the defendant is subject to the maximum penalties set forth in § 1 of this agreement.

12. The government and the defendant agree to the Sentencing Guidelines calculations set forth in this agreement and neither party will advocate or recommend the application of any other Guideline, or move for any Guidelines departure, or move for or recommend a sentence outside the Guidelines, except as specifically set forth in this agreement. A breach of this paragraph by one party will relieve the other party of any agreements made in this plea agreement with respect to sentencing motions and recommendations. A breach of this paragraph by the defendant shall also relieve the government from any agreements to dismiss or not pursue additional charges.

13. The defendant understands that the Court is not bound to accept any Sentencing Guidelines calculations set forth in this agreement and the defendant will not be entitled to withdraw the plea of guilty based on the sentence imposed by the Court.

#### IV. STATUTE OF LIMITATIONS

14. The defendant agrees to waive any defense based on the statute of limitations to the charge in the Information.

15. In the event the defendant's plea of guilty is withdrawn, or conviction vacated, either pre- or post-sentence, by way of appeal, motion, post-conviction proceeding, collateral attack or otherwise, the defendant agrees that any charges dismissed pursuant to this agreement shall be automatically reinstated upon motion of the government and further agrees not to assert the statute of limitations as a defense to any other criminal offense involving or related to the unlawful transportation of individuals in foreign and interstate commerce intending that the individuals to engage in prostitution or other sexual activity prohibited by law which is not time barred as of the date of this agreement. This waiver shall be effective for a period of six months following the date upon which the withdrawal of the guilty plea or vacating of the conviction becomes final.

V. GOVERNMENT RIGHTS AND RESERVATIONS

16. At sentencing, the government agrees to take no position as to the specific sentence within the Guidelines range determined by the Court.

17. The defendant understands that the government has reserved the right to:

- a. provide to the Probation Office and the Court all the information and evidence in its possession that the government deems relevant concerning the defendant's background, character and involvement in the offense charged, the circumstances surrounding the charge and the defendant's criminal history;
- b. respond at sentencing to any statements made by the defendant or on the defendant's behalf that are inconsistent with the information and evidence available to the government; and
- c. modify its position with respect to any sentencing recommendation or sentencing factor under the Guidelines including criminal history category, in the event that subsequent to this agreement the government receives previously unknown information regarding the recommendation or factor.

18. At sentencing, the government will move to dismiss the Criminal Complaint pending against the defendant under Magistrate's No. 10-M-42.

19. The defendant agrees that any financial records and information provided by the defendant to the Probation Office, before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid financial obligation.

VI. APPEAL RIGHTS

20. The defendant understands that Title 18, United States Code, Section 3742 affords a defendant a limited right to appeal the sentence imposed. The defendant, however, knowingly waives the right to appeal and collaterally attack any component of a sentence imposed by the Court which falls within or is less than the sentencing range for imprisonment, a fine and supervised release set forth in Section III, ¶ 11, above, notwithstanding the manner in which the Court determines the sentence. In the event of an appeal of the defendant's sentence by the government, the defendant reserves the right to argue the correctness of the defendant's sentence.

21. The defendant understands that by agreeing to not collaterally attack the sentence, the defendant is waiving the right to challenge the sentence in the event that in the future the defendant becomes aware of previously unknown facts or a change in

the law which the defendant believes would justify a decrease in the defendant's sentence.

22. The government waives its right to appeal any component of a sentence imposed by the Court which falls within or is greater than the sentencing range for imprisonment, a fine and supervised release set forth in Section III, ¶ 11, above, notwithstanding the manner in which the Court determines the sentence. However, in the event of an appeal from the defendant's sentence by the defendant, the government reserves its right to argue the correctness of the defendant's sentence.

#### VII. COOPERATION

23. The defendant will cooperate with the government by providing complete and truthful information regarding the defendant's knowledge of any and all criminal activity, whether undertaken by the defendant or others, in any way involving or related to the unlawful transportation of individuals in foreign and interstate commerce intending that the individuals engage in prostitution or other sexual activity prohibited by law. The defendant's cooperation shall also include submitting to interviews by government attorneys and agents, as well as testifying

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truthfully and completely before grand juries and at such pre-trial and trial proceedings as the government shall deem necessary.

24. The defendant's cooperation shall also be provided to any local, state or federal authorities designated by the government and who have agreed to abide by the terms of the "Cooperation" section of this agreement. The defendant's obligation to testify truthfully and completely shall extend to proceedings in federal, state and local courts in jurisdictions which have agreed to abide by this agreement.

25. In exchange for the defendant's plea of guilty and cooperation as set forth in this agreement, the defendant will not be prosecuted by the Office of the United States Attorney for the Western District of New York for any other federal criminal offenses committed in the Western District of New York, or elsewhere, in any way involving or related to the unlawful transportation of individuals in foreign and interstate commerce intending that the individuals engage in prostitution or other sexual activity prohibited by law, committed up to the date of this agreement and about which the defendant provides complete and truthful information.

26. Further, no testimony, statements or tangible objects provided by the defendant in compliance with this agreement (or any information directly or indirectly derived therefrom) will be used against the defendant in any criminal case, except a prosecution for perjury or making false statements.

27. The defendant understands that, notwithstanding the defendant's obligation to cooperate with the government as set forth in this agreement, the government will not file a motion pursuant to Guidelines § 5K1.1 for a downward departure from the defendant's sentencing range or pursuant to Rule 35(b) for a reduction of the defendant's sentence.

28. This agreement does not preclude the prosecution of the defendant for perjury or making false statements in the event the defendant testifies falsely or provides false information to the government. This agreement is not contingent upon the filing of charges against, the return of an Indictment against, or the successful prosecution of, any person or entity.

29. It is a condition of this agreement that, up through the date of the defendant's sentencing, the defendant shall commit no further crimes. It is also a condition of this agreement that the defendant must, at all times, give complete, truthful and accurate

information and testimony and not withhold information from the government or refuse to testify truthfully and completely. Should the defendant be sentenced prior to the completion of the defendant's cooperation with the government, the defendant's obligation to comply with the cooperation provisions of this agreement extends past sentencing.

30. In the event the government believes the defendant has violated any of the conditions in the "Cooperation" section of this agreement, then the government may, before or after sentencing, petition the Court to declare that the defendant has breached this agreement and for an order relieving the government of its obligations under this agreement.

31. Whether or not the defendant has violated any of the conditions of this agreement shall be determined by the Court in an appropriate proceeding at which any disclosures and documents provided by the defendant shall be admissible and at which the government shall be required to establish any violation by a preponderance of the evidence. In order to establish any violation by the defendant, the government is entitled to rely on statements and information given by the defendant pursuant to this agreement.

32. If this agreement is declared breached:

- a. the defendant shall thereafter be subject to prosecution for any federal criminal violations of which the government has knowledge, including but not limited to, perjury and obstruction of justice;
- b. the government may withdraw any motion filed pursuant to Sentencing Guidelines §5K1.1, Title 18, United States Code, Section 3553(e) and/or Rule 35(b);
- c. the defendant has no right to withdraw the plea of guilty;
- d. the defendant shall waive all rights under Fed. R. Crim. P. 11(f), Fed. R. Evid. 410 and Sentencing Guidelines § 1B1.8 and the defendant expressly agrees that all statements, testimony and tangible objects provided by the defendant (with the exception of statements made in open court during guilty plea proceedings), whether prior or subsequent to this agreement, can be used directly and indirectly in any and all criminal proceedings against the defendant; and
- e. the defendant agrees that any charges that were dismissed pursuant to this agreement shall be automatically reinstated upon motion of the government. Furthermore, the defendant agrees not to assert the statute of limitations as a defense to any criminal offense involving or related to the unlawful transportation of individuals in foreign and interstate commerce intending that the individuals engage in prostitution or other sexual activity prohibited by law which is not time barred as of the date of this agreement. This waiver shall be effective for a period of six months following the date upon which the Court's order declaring the agreement breached by the defendant becomes final.

33. At the time of sentencing, the government will make the nature and extent of the defendant's compliance with this agreement known to the Court. The government and the defendant will request that sentencing be adjourned until full satisfaction by the defendant of the terms of this agreement. In the event the defendant is sentenced prior to the completion of the defendant's cooperation with the government, the government reserves the right to modify any recommendation to be made by the government at sentencing pursuant to Guidelines §5K1.1 and/or Title 18, United States Code, Section 3553(e).

34. The defendant's attorney is expressly permitted to be present at any time the defendant is questioned or interviewed by government agents regarding the matters set forth in this agreement.

#### VIII. TOTAL AGREEMENT AND AFFIRMATIONS

35. This plea agreement represents the total agreement between the defendant, MICHAEL LESINSKI, and the government. There are no promises made by anyone other than those contained in this agreement. This agreement supersedes any other prior agreements,

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written or oral, entered into between the government and the defendant.

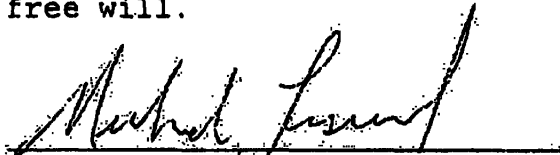
WILLIAM J. HOCHUL, JR.  
United States Attorney  
Western District of New York


BY:

  
ROBERT C. MOSCATI  
Assistant U.S. Attorney

Dated: November 17, 2010

I have read this agreement, which consists of 16 pages. I have had a full opportunity to discuss this agreement with my attorney, RODNEY O. PERSONIUS, Esq. I agree that it represents the total agreement reached between myself and the government. No promises or representations have been made to me other than what is contained in this agreement. I understand all of the consequences of my plea of guilty. I fully agree with the contents of this agreement. I am signing this agreement voluntarily and of my own free will.

  
MICHAEL LESINSKI  
Defendant

  
RODNEY O. PERSONIUS, ESQ.  
Attorney for the Defendant

Dated: November 17, 2010

Dated: November 19, 2010



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Posted: Thu 11:43 AM, Oct 18, 2012

Reporter: Andy Alcock Email

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## WCTV Exclusive: Opponent to Congressman with Ties to 'Royal Order of Jesters' Calls for Representative's Resignation

Jesters 2007 501c10 BOP nearly 800K

October 18, 2012 - New supporting documentation has been released about Representative Gus Bilirakis's involvement with the Royal Order of Jesters, a group with ties to human trafficking and prostitution. Bilirakis represents Florida's 12th district in the US Congress.

His opponent in the election, John Russell, has called for "Representative Bilirakis to relinquish his congressional seat and withdraw from this election immediately based on his history of membership in this secret organization and the threat to national security that his continued membership on the Homeland Security and Foreign Affairs Committee presents."

WCTV will bring you more information as it becomes available.

Gus Bilirakis' Florida

October 18, 2012 - There's new evidence a Florida Congressman is affiliated with a group under fire for human trafficking and prostitution.

A WCTV-exclusive investigation has found federal documents showing Congressman Gus Bilirakis used campaign money to pay membership dues and an event registration to a group called the "Royal Order of Jesters".

A campaign finance expert is on the fence about the legality of those payments.

Gus Bilirakis represents Florida's 9th Congressional District in the Tampa area.

According to federal documents filed by the Bilirakis campaign and initially obtained by Eyewitness News, in 2007 Bilirakis paid nearly 348 dollars to a group called the Royal Order of Jesters Tampa chapter for what's described as "event registration" from campaign funds.

In 2008 federal documents also show Bilirakis paid the Jesters twice from his campaign fund, once for 25 dollars and again for more than 780 dollars. In each case, the purpose was listed as membership dues.

Senior Counsel Paul Ryan with the non-profit non-partisan Campaign Legal Center has worked in campaign finance law for more than a decade.

"The dividing line is, if it's for recreational purposes, it's personal use, it's off limits," Ryan said.

"If it's for professional purposes and political in nature, the organization and the membership dues, then it's allowable," he said.

So what is the Royal Order of Jesters?



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Internet journalist Sandy Frost has been investigating this offshoot group of the Shriners for nearly 5 years.

"The jesters are generally made up of judges, people in law enforcement, sheriffs and people in power," Frost said.

According to an Indiana court document, there are 191 groups or courts in North America with nearly 21-thousand members.

Federal documents show 12 jester courts in Florida, second only to Texas for the highest number in any state.

Over the last several years, there have been major issues with jester groups around the country, but none of them have been tied to Congressman Billirakis.

A former tour operator is facing a lawsuit and criminal investigations in both the U.S. and Brazil. He's accused of soliciting under-aged prostitutes on fishing trips to Brazil, but denies the charges.

In a prior suit, he was accused taking 19 jesters on one of those trips.

Also, 3 jesters were caught in a human trafficking sting for taking an undocumented illegal alien to be a sex slave at a jester party in Kentucky. Those jesters include a former New York state Supreme Court judge, his law clerk and a retired police captain.

While only a handful of jesters have been successfully prosecuted, in one of those cases, the FBI stated the jesters nationally have the motto "mirth is king" and engage in social gatherings known as "books of play".

The sworn federal complaint says quote, "a typical feature of a book of play is the presence of prostitutes who engage in commercial sex acts with members."

"Extremely serious stuff for a congressman to be involved in this group," said Frost.

We spoke with an officer of the Tampa Jesters Court who tells us he has no knowledge of members in his group engaging with prostitutes.

On the issue of Congressman Billirakis' use of campaign funds for the jesters, Ryan believes it's open to question under campaign finance law.

"This is an issue that the Federal Election Commission, were a complaint to be filed against the Congressman, would probably take a pretty close look at," said Ryan.

We asked Ryan if he had an opinion about whether he thought the campaign funds spent were legal or illegal.

"This strikes me as a pretty close call," said Ryan.

Ryan says in instances like this one, the best path for a candidate is to ask the FEC for an advisory opinion.

In one example we found, federal records show then Congressman Mike Billirakis' Gus' father, asked the FEC in 1989 for an opinion about using campaign funds for an event known as the "Kids First Family Fair".

The event was co-hosted with Gus who was then a state representative.

However, FEC records show now Congressman Gus Billirakis has never asked the Federal Elections Commission for an advisory opinion, including about his jester expenses.

"Generally, I think that elected officials are wise to steer clear of the type of controversy that results when you would use campaign funds to associate yourself with a group like this one, the Royal Order of Jestors," said Ryan.

Congressman Billirakis has no links to the past or present jester activities mentioned in this story.

We first contacted his Washington office on Tuesday morning, October 9.

We also sent an e-mail to the congressman's campaign manager requesting an explanation of the jester expenses.

To date, despite multiple follow ups, including the day our story aired on television, we've heard no comment from the Billirakis Campaign or his office.

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8. WCTV Exclusive: Opponent to Congressman with Ties to 'Royal Order of Jestors' Calls for Representative's Resignation
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NAME OF COMMITTEE (In Full)

Bilirakis for Congress

Full Name (Last, First, Middle-Initial)

A. Royal Order of Jesters

Mailing Address 3922 Versailles Drive

City Tampa State FL Zip Code 33634

Purpose of Disbursement  
event registration

Candidate Name

Category/  
Type
Office Sought: House Senate President  
Disbursement For: 2008  
☒ Primary General  
Other (specify): ▼  
State: District:
Transaction ID: D232-014k01  
Date of Disbursement

04 05 2007

Amount of Each Disbursement this Period

339.13

Refund or Disposal of Excess  
Contributions Required Under  
11 C.F.R. 400.53

Full Name (Last, First, Middle Initial)

B. Sprint

Mailing Address P.O. Box 660092

City Dallas State TX Zip Code 75266

Purpose of Disbursement  
telephone

Candidate Name

Category/  
Type
Office Sought: House Senate President  
Disbursement For: 2008  
☒ Primary General  
Other (specify): ▼  
State: District:
Transaction ID: D248-00160R  
Date of Disbursement

04 16 2007

Amount of Each Disbursement this Period

309.76

Refund or Disposal of Excess  
Contributions Required Under  
11 C.F.R. 400.53

Full Name (Last, First, Middle Initial)

C. Sprint

Mailing Address P.O. Box 660092

City Dallas State TX Zip Code 75266

Purpose of Disbursement  
telephone

Candidate Name

Category/  
Type
Office Sought: House Senate President  
Disbursement For: 2008  
☒ Primary General  
Other (specify): ▼  
State: District:
Transaction ID: D249-00160S  
Date of Disbursement

05 04 2007

Amount of Each Disbursement this Period

337.61

Refund or Disposal of Excess  
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<input type="checkbox"/> 20a	<input type="checkbox"/> 20b	<input type="checkbox"/> 20c	<input type="checkbox"/> 21

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NAME OF COMMITTEE (In Full)  
Billrakis for Congress

A.

Full Name (Last, First, Middle Initial)  
Public Concepts, LLC

Mailing Address 5730 Corporate Way, #214

City State Zip Code  
West Palm Beach FL 33407Purpose of Disbursement  
postage

Candidate Name

Category/  
TypeOffice Sought: House  
Senate  
President  
State: District:Disbursement For: 2008  
Primary ☐ General ☒  
Other (specify) ▼Transaction ID: D906-019L06  
Date of Disbursement

10/23/2008

Amount of Each Disbursement this Period

121.94

Refund or Disposal of Excess  
Contributions Required Under  
11 C.F.R. 400.53

B.

Full Name (Last, First, Middle Initial)  
Royal Order of Jesters

Mailing Address 3922 Versailles Drive

City State Zip Code  
Tampa FL 33634Purpose of Disbursement  
membership dues

Candidate Name

Category/  
TypeOffice Sought: House  
Senate  
President  
State: District:Disbursement For: 2008  
Primary ☐ General ☒  
Other (specify) ▼Transaction ID: D985-014k03  
Date of Disbursement

11/04/2008

Amount of Each Disbursement this Period

25.00

Refund or Disposal of Excess  
Contributions Required Under  
11 C.F.R. 400.53

C.

Full Name (Last, First, Middle Initial)  
Royal Order of Jesters

Mailing Address 3922 Versailles Drive

City State Zip Code  
Tampa FL 33634Purpose of Disbursement  
membership dues

Candidate Name

Category/  
TypeOffice Sought: House  
Senate  
President  
State: District:Disbursement For: 2008  
Primary ☐ General ☒  
Other (specify) ▼Transaction ID: D986-014k04  
Date of Disbursement

11/13/2008

Amount of Each Disbursement this Period

788.13

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SUBTOTAL of Disbursements This Page (optional) ▶

927.07

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**Matthew J. Ehinger, Ice Miller LLP**

**John C. Slatten, Attorney**

**Respondent.**

**Assessment Year: 2008 and 2010**

## Page 1 of 21

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **ISSUE**

1. The issue presented for consideration by the Board is whether the Petitioner was entitled to an exemption for charitable, educational and religious purposes pursuant to Indiana Code § 6-1.1-10-16 for the 2008 and 2010 assessment years.

### **PROCEDURAL HISTORY**

2. On May 5, 2008, Alex Rogers, the Executive Director of International Royal Order of Jesters, Inc. (the Jesters), filed a Form 136, Application for Property Tax Exemption on behalf of the Petitioner, seeking an exemption for property owned by the Jesters for the 2008 assessment year. On October 23, 2009, the Marion County Property Tax Assessment Board of Appeals (PTABOA) issued a Form 120, Notice of Action on Exemption Application, finding that the Petitioner's real and personal property was 100% taxable for 2008. On December 1, 2009, Paul M. Jones of Ice Miller LLP, as representative of the Jesters, filed a Form 132, Petition for Review of Exemption, with the Board claiming the Petitioner's real and personal property should be 100% exempt under Indiana Code § 6-1.1-10-16 for 2008.
3. On May 14, 2010, Mr. Rogers filed a Form 136, Application for Property Tax Exemption on behalf of the Petitioner, seeking an exemption for the Jesters' property for the 2010 assessment year. On December 28, 2010, the PTABOA issued a Form 120, Notice of Action on Exemption Application, finding that the Petitioner's real and personal property was 100% taxable for 2010. On February 8, 2011, Mr. Jones filed a Form 132, Petition for Review of Exemption, with the Board claiming the Petitioner's real and personal property should be 100% exempt under Indiana Code § 6-1.1-10-16 for 2010.

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## HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4, Carol Comer, the duly designated Administrative Law Judge authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on October 11, 2011, in Indianapolis, Indiana.

5. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Alex Rogers, Executive Director,

For the Respondent:<sup>1</sup>

Melissa Tetrick, Marion County Deputy Assessor

Nicole Webb, Marion County Deputy Assessor

6. The Petitioner submitted the following exhibits:<sup>2</sup>

Petitioner Exhibit A – Application for Property Tax Exemption – Form 136 for 2008, and Indiana Board of Tax Review Final Determination, dated January 3, 2007, with attached Settlement Agreement and Order.

Petitioner Exhibit B – Notice of Action on Exemption Application – Form 120 for 2008,

Petitioner Exhibit C – Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132 for 2008, Internal Revenue Service letter, Notice of Action on Exemption Application – Form 120 for 2008, Application for Property Tax Exemption – Form 136 for 2008, Marion County Assessor appeals database sheet, Indiana Board of Tax Review Final Determination, dated January 3, 2007, with attached Settlement Agreement and Order, Certificate of Incorporation, Articles of Incorporation, Bylaws, financial statements for 2004, 2005, and 2006,

<sup>1</sup> Ms. Tetrick and Ms. Webb did not present any testimony at the hearing.

<sup>2</sup> Mr. Jones requested the Board take judicial notice of the Internal Revenue Service Publication 557, concerning 501(c)(10) "Fraternal Beneficiary Societies and Domestic Fraternal Societies."

- and Notice of Appearance for Mark J. Richards, Paul M. Jones, Jr., and Matthew J. Ehinger,
- Petitioner Exhibit D – Application for Property Tax Exemption – Form 136 for 2010, Indiana Board of Tax Review Final Determination, dated January 3, 2007, with attached Settlement Agreement and Order,
- Petitioner Exhibit E – Notice of Action on Exemption Application – Form 120 for 2010,
- Petitioner Exhibit F – Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132 for 2010, Notice of Action on Exemption Application – Form 120 for 2010, Application for Property Tax Exemption – Form 136 for 2010, Indiana Board of Tax Review Final Determination, dated January 3, 2007, with attached Settlement Agreement and Order, Internal Revenue Service letters, and financial statements for 2007, 2008, and 2009,
- Petitioner Exhibit G – Petitioner's Memorandum of Law,
- Petitioner Exhibit H – The Petitioner's property's property record card,
- Petitioner Exhibit I – Photographs of the subject property,
- Petitioner Exhibit J – Dedication program, brochure, newsletter and floor plan for the building,
- Petitioner Exhibit K – Business Tangible Personal Property Assessment Return – Form 103-Long for 2008, 2009, and 2010,
- Petitioner Exhibit L – Certification of Incorporation and Articles of Incorporation for the Jesters,
- Petitioner Exhibit M – Bylaws of the Jesters,
- Petitioner Exhibit N – Letters from the Internal Revenue Service, dated April 15, 2008, and March 3, 2004, respectively,
- Petitioner Exhibit O – Constitution, Bylaws and Edicts of the National Court, Royal Order of Jesters,
- Petitioner Exhibit P – Letter from the Internal Revenue Service, dated December 13, 1978,
- Petitioner Exhibit Q – U.S. National Masonic Appendant Bodies.

7. The Respondent did not submit any exhibits.
8. The following additional items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:

Board Exhibit A – Form 132 petitions with attachments,  
 Board Exhibit B – Notices of Hearing on Petition, dated September 22, 2011.

- 13044332715
9. The property under appeal is a 5,081 sq. ft. office building and a parking lot located at 5725 Liberty Crossing Drive, Indianapolis, in Pike Township, Marion County.
  10. The ALJ did not conduct an on-site inspection of the property.
  11. For 2008 and 2010, the PTABOA determined the Petitioner's real and personal property to be 100% taxable.
  12. For 2008 and 2010, the Petitioner contends its real and personal property should be 100% tax-exempt.

#### **JURISDICTIONAL FRAMEWORK**

13. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. See Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

#### **BASIS OF EXEMPTION AND BURDEN**

14. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.

15. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
16. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
17. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

#### PETITIONER'S CONTENTIONS

18. The Petitioner's counsel contends that the Petitioner's real and personal property should be 100% exempt from property taxation under Indiana Code § 6-1.1-10-16. *Jones argument; Petitioner Exhibit G*. According to Mr. Jones, the Petitioner's property is owned, occupied and used for charitable, educational and religious purposes. *Id*
19. The Petitioner's witness testified that the Jesters was founded on February 20, 1911, by a group of Shriners on a transatlantic journey. *Rogers testimony; Petitioner Exhibit J*. It is



a Texas non-profit corporation that was granted permission to conduct business in Indiana May 24, 2004. *Petitioner Exhibit L*. The current headquarters of the Jesters and a museum commemorating the Jesters' history was dedicated on May 12, 2006.

*Petitioner Exhibit J*.

20. The Petitioner's exhibits show that the Jesters is exempt from federal taxation under 501(c)(3) and 501(c)(10) of the Internal Revenue Code. *Petitioner Exhibits N and P*. According to the Petitioner's counsel, the Jesters is a "domestic fraternal organization operating under a lodge system devoted entirely to religious, charitable, educational and fraternal purposes" that does not "provide payment of life, sick, accident or other benefits to its members." *Jones argument; Petitioner Exhibit G*. Mr. Rogers testified there are 191 subordinate courts in the United States, Canada, Mexico and the Republic of Panama, with approximately 20,500 members. *Id.; Petitioner Exhibit J*.
21. The Jesters is part of the Masonic fraternity, which Mr. Rogers testified, is the "highest respected fraternal organization there is in the world."<sup>3</sup> *Rogers testimony*. According to Mr. Rogers, the Masons is a "character building organization" whose purpose is to "strengthen the individual character of a man through its rituals and through its teachings." *Id.* The purpose of the Jesters is spreading the gospel of mirth, merriment and cheerfulness, promoting fellowship and fraternity among members, and extending good cheer and assistance to the general public, which furthers the Masonic principles of brotherly love, belief and truth. *Id.; Petitioner Exhibit L*. "Mirth is king explains to the world the purpose of our existence. There has always been plenty of heartache and misery." *Rogers testimony*.
22. The International Royal Order of Jesters was incorporated in 2003 to purchase the subject property for the Jesters' headquarters. *Rogers testimony*. Mr. Rogers testified the Jesters'

<sup>3</sup> To be a Jester, one must first be a Mason and then a Shriner. *Rogers testimony*. Although there is an off-shoot organization that involves women, the Masonic fraternity is a male fraternity. *Id.* Therefore, Mr. Rogers testified, women are not allowed to be members of the Jesters. *Id.*

building serves two purposes: it is the headquarters for the National Court, Royal Order of Jesters, and it is also the museum for the International Royal Order of Jesters. *Id.* Mr. Rogers testified that the building at issue in this appeal has 5,000 square feet. *Id.*; *Petitioner Exhibit J.*

23. Mr. Rogers testified that the National Court leases 1,800 square feet of the subject building from the Jesters. *Rogers testimony.* The National Court holds Board of Directors meetings three times a year in various locations. *Id.* In 2011, the meeting was conducted at the property. *Id.* However, general membership meetings for the Jesters are conducted by the individual lodges or courts. *Id.* Mainly, the property at issue in this appeal is used for administration, such as collecting financial information, sending out reports to the various subordinate courts and answering questions about the bylaws. *Id.*
24. The remaining area of the building houses the museum. *Rogers testimony.* Mr. Rogers testified that the building is open five days a week from 8:30 a.m. to 5:00 p.m. and on Saturdays by appointment. *Id.* The museum displays historical artifacts, photographs, various Jester statuettes, and other items related to Masonry.<sup>4</sup> *Rogers testimony; Petitioner Exhibits G and I.* The museum began operation on June 1, 2007, and is open to the public during regular business hours. *Rogers testimony; Petitioner Exhibit G.* In response to questions, however, Mr. Rogers testified that the museum is not on the national museum registry. *Rogers testimony.* Further, Mr. Rogers testified there is no exterior signage or outreach to the community advertising the museum. *Id.* The museum's hours of operation are only publicized in a newsletter that is distributed to the Jester members.<sup>5</sup> *Id.*
25. In response to questioning about the property's charitable use, Mr. Rogers testified that "the basic Masonic fraternity is looked upon as charitable." *Rogers testimony.* When

<sup>4</sup> Mr. Rogers testified that the personal property also includes items such as showcases, chairs, tables, computers, telephone system, and basic office equipment. *Rogers testimony; Petitioner Exhibit K*

<sup>5</sup> Mr. Rogers testified that typically it is Jesters members that tour the museum. *Rogers testimony.* However, on one occasion some Pike Township school teachers visited. *Id.*

pressed about contributions the Jesters make to support charitable endeavors, Mr. Rogers testified that individual members of the Jesters on their own behalf make contributions to the Shrine Hospital and other charities, but the Jesters organization itself had not "written" any checks to the Shrine Hospital or any other charities. *Rogers testimony.* According to Mr. Rogers, it is the individual members contributing to the "charitable welfare" of the country. *Id.* Mr. Rogers admitted that the Jesters "don't hold ourselves out and publicize ourselves as givers or as charitable benefactors." *Id.*

26. Similarly, when asked about the Jesters' educational and religious activities, Mr. Rogers testified that education would "probably" be through the newsletters the organization sends to its members. *Rogers testimony.* For example, Mr. Rogers testified, a newsletter recently addressed the history of Shakespeare because the Jesters bases its rituals on Shakespearean plays. *Id.* Moreover, Mr. Rogers admitted that the Jesters does "not have any strictly religious activities." *Id.* However, he argues that all members have a faith and a belief in a supreme being. *Id.* "In order to be a Jester... you have to have some kind of belief in some type of deity, no matter what it may be... belief in God, but we don't have religious services as such like you would in a church." *Id.*
27. The Petitioner's counsel argues that Indiana case law recognizes that the Masonic order is a charitable institution and that Masonry falls within the categories of a religious, educational and charitable institution. *Jones argument.* According to Mr. Jones, Masonic organizations and their activities are exempt even if they primarily confine their benefits to individuals or members of a particular group or order. *Jones argument; Petitioner Exhibit G; citing City of Indianapolis v. The Grand Master Etc. of the Grand Lodge of Indiana*, 25 Ind. 518 (1865); and *State Board of Tax Commissioners v. Trustees of Adoniram Lodge*, 250 N.E.2d 605 (Ind. Ct. App. 1969). The Petitioner's counsel further argues a property leased by a charitable organization to another exempt organization qualifies for property tax exemption if it is owned, occupied and used for exempt purposes. *Jones argument.* Moreover, the property may be exempt from property tax if it is occasionally used by a for-profit organization. *Petitioner Exhibit G.*

According to Mr. Jones, an organization qualifies for property tax exemption if the property is found to be "reasonably necessary" for the maintenance or effective welfare of the organization's exempt purposes, including office and administrative space.

*Petitioner Exhibit G, citing St. Mary's Medical Center v. State Board of Tax Commissioners*, 571 N.E.2d 1247 (Ind. 1991); and *National Federation of Music Clubs v. Johnson County Assessor*, Petition No. 41-041-09-2-8-00008 (June 1, 2011).

28. Finally, the Petitioner's counsel argues that the Petitioner was granted a 100% tax exemption on its real property and personal property for the years of 2005, 2006 and 2007. *Jones argument; Petitioner Exhibits A and C.*

#### RESPONDENT'S CONTENTIONS

29. The Respondent's counsel argues that the Petitioner is not entitled to an exemption on its property for either 2008 or 2010. *Slatten argument.* According to Mr. Slatten, the Petitioner's property is only used for "administrative purposes." *Id.* Therefore, the Petitioner failed to show that its property was predominately used for any exempt purpose. *Id.*
30. Mr. Slatten also argues that the Petitioner has not shown a public benefit that would justify the loss of tax revenue. *Slatten argument.* Mr. Slatten argues the purpose of the Jesters and the National Court is for "mirth" and entertainment for its members. *Id.* Because the organization does not serve the class of people that are legitimate subjects of charity and because the government has no obligation to provide entertainment, merriment or "mirth," Mr. Slatten argues, the property does not relieve any government burden. *Id.* According to Mr. Slatten, the Jesters are a "recreational group" that is predominantly a social club. *Id.*
31. Finally, the Respondent's counsel argues the Jesters is not engaged in any charitable activities and any educational activities are limited to the membership of the Jesters.

*Slatten argument.* Therefore, Mr. Slatten argues, the Petitioner has not established an educational or charitable purpose. *Id.* Moreover, the museum is not advertised or promoted as being open for the public's use. *Slatten argument, citing National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax 1996); and *Fort Wayne Sport Club, Inc. v. State Board of Tax Commissioners*, 258 N.E.2d 874, 881 (1970). Therefore, the museum simply serves the purposes of the Jesters and its members like in the *National Association of Miniature Enthusiasts* case. *Id.*

#### ANALYSIS OF THE ISSUE

32. Indiana Code § 6-1.1-10-16(a) provides that "All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes." Further, "a tract of land ... is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it." Ind. Code § 6-1.1-10-16(a). "Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building." Ind. Code § 6-1.1-10-16 (e). An exemption requires probative evidence that a property is owned, occupied, and used for an exempt purpose. *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005). Once these three elements are met, the property can be exempt from property taxation. *Id.*
  
33. Exemption statutes are strictly construed against the taxpayer. *See New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*, 733 N.E.2d 36,38 (Ind. Tax Ct. 2000). The taxpayer bears the burden of proving that it is entitled to the exemption it seeks. *Id.* Despite this, the term "charitable purpose" is to be defined and understood in its broadest constitutional sense. *Knox County Property Tax Assessment Board of Appeals*, 826 N.E.2d at 182 (citing *Indianapolis Elks Bldg. v. State*

*Board of Tax Commissioners*, 251 N.E.2d 673, 682 (1969)). A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006).

34. The test used to determine whether all or a portion of a property qualifies for an exemption is the "predominant use" test. *State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Indiana Code § 6-1.1-10-36.3(a) states that "property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property." Indiana Code § 6-1.1-10-36.3(c) further provides that "[p]roperty that is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year." Ind. Code § 6-1.1-10-36.3(c)(3).
35. "The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose," however, "is a fact sensitive inquiry; there are no bright-line tests." *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13 (Ind. Tax Ct. 2009). Thus every exemption case "stand[s] on its own facts" and on how the parties present those facts. See *Indianapolis Osteopathic Hospital, Inc.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471

(Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).

36. Here, the Petitioner is a non-profit organization whose purpose is spreading mirth and cheerfulness, promoting good fellowship, extending assistance and good cheer to others, promoting fraternalism, and providing a museum for items and articles of mirth, comedy and laughter. *Petitioner Exhibit L*. The Jesters is part of the Masonic fraternity, which the Petitioner's counsel argues has been held to be a religious, charitable and educational organization for almost a hundred and fifty years. *Jones argument*:
37. The Petitioner presented two cases in support of its argument that, because the Jesters is part of the Masonic fraternity, the Jesters is a religious, charitable and educational organization and its property is therefore used for exempt purposes. The first case, *City of Indianapolis v. The Grand Master of the Grand Lodge of Indiana*, 25 Ind. 518 (Ind. 1865), held that the fact that the Masonic lodge confined its benefits to members who paid a fee for such benefits did not deprive the lodge of its charitable character and the property was therefore entitled to exemption. The second case, *State Board of Tax Commissioners v. Trustees, Adoniram Lodge, Scottish Rite*, 250 N.E.2d 605 (Ind. App. Ct. 1969) similarly held that Masonic property was exempt. In that case, the Court of Appeals cited the Supreme Court of Nebraska in finding that "Masonry falls entirely, without exception, within the three categories of charity, educational purpose, and religious purpose. It has no other function or purpose and does no other work." 250 N.E.2d at 607, citing *S.R. of Freemasonry v. Board of County Commissioners*, 241 N.W. 93 (Neb. 1932). The Petitioner also referred to a 1932 Attorney General opinion recognizing the exempt status of property used for the Indiana Masonic Home.<sup>6</sup> 1932 Op. Atty. Gen. 783.

<sup>6</sup> Contrary to the Petitioner's memorandum, the Petitioner's *Adoniram* case cites to a 1944 Attorney General opinion. This does not change the Board's analysis.

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38. The Court of Appeals based its findings in the *Adoniram Lodge* case on the concept of legislative acquiescence. 250 N.E.2d at 608. According to the Court, the Attorney General in 1944 interpreted the exemption statute in existence at that time to exempt the property of Masonic organizations which was owned occupied and used for the purposes of such organizations. *Id.* "This interpretation has been followed and adhered to for more than 20 years by those agencies dealing with tax exemptions. The Legislature has not, to date, changed the substantive law regarding such exempt property which shows a clear acquiescence of this interpretation." *Id.* at 608 and 609.
39. A similar argument was raised by the taxpayer in *Board of Tax Commissioners v. Fraternal Order of Eagles, Lodge No. 255*, 521 N.E.2d 678 (Ind. 1988). In that case, the property owner had received a charitable exemption on its property for ten years prior to the assessment year at issue. The Tax Court, in that case, held that the property, used "to strengthen the bonds of fraternalism and social activities between members; to promote patriotic, humanitarian and fraternal teaching of the F.O.E. and to inculcate among the members a sense of service to their state and to their nation; and to work and raise funds for charitable and humanitarian funds set up specifically for the purpose by the F.O.E." was exempt from property tax based on the doctrine of legislative acquiescence.
40. Upon review, the Indiana Supreme Court reversed Judge Fisher's decision. According to the Court, "the percentage of income (2.8) given as charitable donations can hardly be claimed to cloak the appellee with charitable immunity. When one measures this against the various recreational activities... engaged in by the appellee on the premises, it can hardly be said that they comply with the [exemption] statute; nor do they come within the ruling of" *Sahara Grotto v. State Board of Tax Commissioners*, 261 N.E.2d 873 (Ind. 1970). 521 N.E.2d at 681. Thus, the Supreme Court held "invoking the doctrine of legislative acquiescence upon the facts in the case at bar overbroadens its scope." *Id.* According to the Court, "to so broaden the doctrine would be to trap administrative



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agencies in their own mistakes and in the absence of legislative change would force them to continue their errors *ad infinitum*.”<sup>7</sup> *Id.*

41. Here, the Petitioner presented no evidence that the Masonic fraternity as it exists today operates in the same manner, performs the same functions and retains the same position in society as it did 150 years ago when the Indiana Supreme Court found that its property was exempt. Nor did the Petitioner show that the exemption statute at issue here is the same or substantially similar to the exemption statute applied by the Court in 1865. Likewise, the Petitioner failed to show that the Jesters operates in the same manner, performs the same functions and retains the same position in society as the Masons. Thus, to the extent the *Grand Master of the Grand Lodge of Indiana* remains good law 150 years later, the case merely found property owned by the Free Masons to be exempt. Nowhere in that decision was there any analysis of property owned, occupied and used by the Jesters.
42. In addition, the *Adoniram Lodge* decision – which addressed property owned by the Scottish Rite rather than the Jesters – was issued in 1969 by the Court of Appeals which currently has no jurisdiction over tax matters. More importantly, contrary to the Appellate Court’s legislative acquiescence argument in that case, when the legislature promulgated a statute that exempted the property of various named organizations, neither

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<sup>7</sup> The Court observed that “if, for instance in the case at bar the legislature had become alarmed by the fact the taxing authorities were allowing appellee to enjoy a tax free status, what would have been their course of action? The wording of the statute clearly did not apply to appellee’s situation. The taxing authorities simply were not following the statute in that instance. Is the legislature to more firmly enact the same general principle? Are they to pass legislation to specifically correct a single situation?” 521 N.E.2d at 681.

the Masons nor any member of the Masonic fraternity was cited as exempt.<sup>8</sup> See Ind. Code § 6-1.1-10-25. That statute was amended in 1977, 1980 and 1983. Yet still the legislature has not granted an exemption to the Masons in general, nor to the Jesters specifically.

43. Because property owned by Masonic organizations has not been legislated to be *per se* exempt, the Petitioner must show that its property is predominantly owned, occupied and used for exempt purposes. See *6787 Steelworkers Hall v. Scott*, 933 NE.2d 591, 597 fn. 9 ("because the use of property for union activities was not a *per se* exemption qualifier... Local 6787 needed to provide additional support in order to demonstrate those activities were indeed educational and charitable in nature.")
44. The evidence shows that the Jesters lease 1,800 square feet of its building to the National Court and both the National Court and the Jesters use the property to maintain membership information, financial records and address changes and processing Jester related membership certificates to subordinate courts. The property also has a museum in the remaining 3,200 square feet of the building, which displays historical artifacts, photographs, various Jester statuettes, and other items related to Masonry. The Petitioner

<sup>8</sup> **Miscellaneous organizations.** (a) Subject to the limitations contained in subsection (b) of this section, tangible property is exempt from property taxation if it is owned by any of the following organizations:

- (1) The Young Men's Christian Association;
  - (2) The Salvation Army, Inc.
  - (3) The Knights of Columbus.
  - (4) The Young Men's Hebrew Association.
  - (5) The Young Women's Christian Association.
  - (6) A chapter or post of Disabled American Veterans of World War I or II.
  - (7) A chapter or post of the Veterans of Foreign Wars.
  - (8) A post of the American Legion.
  - (9) A post of the American War Veterans.
  - (10) A camp of United States Spanish War Veterans.
  - (11) The Boy Scouts of America, one (1) or more of its incorporated local councils, or a bank or trust company in trust for the benefit of one (1) or more of its local councils.
  - (12) The Girl Scouts of the U.S.A., one or more of its incorporated local councils, or a bank or trust company in trust for the benefit of one (1) or more of its local councils.
- (b) This exemption does not apply unless the property is exclusively used, and in the case of real property actually occupied, for the purposes and objectives of the organization.

argues that the purpose of the Jesters is charitable, educational and religious. The evidence, however, does not support such a finding.

45. While the Petitioner's witness testified to the charitable purposes of other Masonic organizations — such as the Shrine hospitals — Mr. Rogers testified to no specific charitable purpose for the Jesters. In fact, Mr. Rogers testified that the Jesters "exist" but "we don't hold ourselves out and publicize ourselves as givers" or as charitable benefactors. Even if the Jesters could claim credit for its members' charitable contributions, the amount of charitable contributions of an organization is not probative of the entity's predominant use of its property. *See Plainfield Elks Lodge No. 2186 v. State Board of Tax Commissioners*, 733 N.E.2d 32, 36 fn. 6 (Ind. Tax Ct. 2000) ("This is not to infer, however, that the determination of an organization's exempt status turns on the percentage of its gross income used for charitable, educational or other benevolent purposes. ... While the State Board invites this Court to establish a bright-line test based on an organization's percentage of charitable giving, the Court respectfully declines such an invitation and points out that neither the legislature, nor the State Board has adopted such a test.") The Jesters' main function, as Mr. Rogers repeatedly testified, is to promote the members' fraternalism, spreading mirth and cheerfulness and promoting good fellowship. To the extent charity exists in that mission, the Board holds that it is insufficient to support a finding that the property owned by the Jesters is exempt.
46. In addition, the Petitioner contends its property is used for educational purposes. However the only examples Mr. Rogers provided was that a recent newsletter included a history of Shakespeare and that the museum depicts the history of the Jesters.
47. An analogous situation was addressed by the Tax Court in *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996). In that case, the National Association of Miniature Enthusiasts (NAME) owned a house and outbuilding that was used for a museum, library and administrative offices to "stimulate and enhance the interest and understanding of the general public in

the construction and collection of miniatures as historical and creative art forms;... to provide instruction and training to those members of the general public interested in miniature building and collections through publications, workshops, permanent and temporary exhibitions, programs, conferences and conventions... recognize outstanding achievement in the creation and promotion of miniatures as an art form ... stimulate the exchange of information through the support of regional groups of persons interested in miniature building and collecting ... and develop a permanent collection and museum devoted to the art of miniature construction for the benefit of the general public." 671 N.E.2d at 220. NAME published a quarterly periodical – the *Miniature Gazette* – sponsored houseparties, promoted local clubs, maintained a permanent collection and museum at its headquarters, and conducted miniature workshops. *Id.*

48. In its decision, the Tax Court found that NAME's property was not entitled to a charitable exemption because "operating a museum for the public and enhancing the public's knowledge about miniatures, while a noble endeavor, does not relieve human want and suffering." *National Association of Miniature Enthusiasts*, 671 N.E.2d at 221. In addition, the Court found that the property was not entitled to an educational exemption because "to qualify for an educational purpose exemption, NAME must show that it 'provides at least some substantial part of the educational training which would otherwise be furnished by our tax supported schools.'" *Id.*, citing *State Board of Tax Commissioners v. Fort Wayne Sports Club, Inc.*, 258 N.E.2d 874 (Ind. Ct. App. 1970). According to Judge Fisher, "publishing a magazine and newsletter, as well as organizing and supporting houseparties and local clubs are the focus of NAME's activities and efforts. Any educational training provided through NAME's museum, library, workshops, local clubs, and houseparties are merely incidental to its recreational and hobby activities." *Id.* at 222. "To meet its burden, NAME would have needed to demonstrate how its activities educated the public on art, history, nature, science, or other subjects of instruction furnished by tax supported schools. Merely showing, as NAME has done, that information and instruction with respect to miniatures are available to the public is not sufficient to qualify for an educational exemption." *Id.*

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49. The Petitioner's museum does not purport to be a history of Shakespeare or of Shakespearean works. Nor does the Petitioner claim that its statutes or memorabilia have artistic merit. To the contrary, Mr. Rogers testified that its artifacts represent the history of the Jesters. The Board finds that such artifacts do not educate the public on "art, history, nature, science, or other subjects of instruction furnished by tax supported schools" and, in fact, are intended mainly for the Jesters' own members and members of the Masonic fraternity. This finding is supported by Mr. Rogers' testimony that there is no exterior sign for the museum and the museum hours are only published in the Jesters' newsletters. Merely showing that information is available to the public about the Jesters or the Masons in general "is not sufficient to qualify for an educational exemption." *National Association of Miniature Enthusiasts*, 671 N.E.2d at 222. See also *Department of Local Government Finance v. Roller Skating Rink Operators Associations*, 853 N.E.2d 1262, 1266 (Ind. 2006) ("Education that primarily serves the private interests of an organization's members does not warrant public subsidy. It does not meet the 'public benefit' test established in Indiana case law.")
50. The Petitioner's counsel claims the Petitioner's property is also owned, occupied and used for religious purposes. *Jones argument; Petitioner Exhibit G*. Mr. Rogers testified that all members of the Jesters have a faith and a belief in a supreme being. *Rogers testimony*. "In order to be a Jester... you have to have some kind of belief in some type of deity, no matter what it may be... belief in God, but we don't have religious services as such like you would in a church." *Id.* In fact, Mr. Rogers admits, the Jesters does "not have any strictly religious activities." *Id.* Anyone who seeks an exemption bears the burden of proving that the requirements for exemption are satisfied. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventist v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987). The Petitioner has the burden to establish a predominant religious use during the time period

that is relevant or probative for 2008 and 2010. The record contains no such probative evidence that the property under appeal was used for any religious purposes.

51. Finally, the Petitioner's counsel argues that the Petitioner's property was granted a property tax exemption in 2005, 2006 and 2007, implying that the property should therefore also be exempt for 2008 and 2010. However, the Petitioner's previous exempt status is not probative of whether the Petitioner owned, operated and used its property for exempt purposes in 2008 and 2010. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). See also *Board of Tax Commissioners v. Fraternal Order of Eagles, Lodge No. 255*, 521 N.E.2d 678 (Ind. 1988) (Lodge's exempt status for ten years prior to the assessment date at issue did not entitle the Lodge to a continued exemption where the property did not meet the requirements of the exemption statutes).
52. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### SUMMARY OF FINAL DETERMINATION

53. The Petitioner failed to establish a prima facie case that it was entitled to an exemption under Indiana Code § 6-1.1-10-16. The Board finds in favor of the Respondent and holds the Petitioner's real and personal property is 100% taxable for the March 1, 2008, and March 1, 2010 assessment years.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman,  
Indiana Board of Tax Review

Commissioner,  
Indiana Board of Tax Review

Commissioner,  
Indiana Board of Tax Review

### IMPORTANT NOTICE

#### - APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5 as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE0287.1.html>.